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February 29, 2008

FILED/ACCEPTED

FEB 29 2008

Federal Communications Commission
Office of the Secretary

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation, WC Docket No. 96-45

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the undersigned counsel hereby provides notice of a February 28, 2008 *ex parte* meeting with Dana R. Shaffer, Bureau Chief and Jeremy Marcus, Acting Deputy Chief, Office of the Bureau Chief, Wireline Competition Bureau, in the proceeding identified above. In attendance were: Messrs. Thomas B. Barker, Chief Executive Officer, and David C. Mussman, General Counsel, West Corporation; Brad E. Mutschelknaus and Steven A. Augustino of Kelley Drye & Warren LLP.

In the meeting, we discussed the Request for Review By Intercall, Inc. of Decision of Universal Service Administrator, in WCB Docket 96-45. The enclosed presentation materials were discussed.

Sincerely,



Steven A. Augustino

SAA:pab
Enclosure

cc: Dana R. Shaffer, without enclosure
Jeremy Marcus, without enclosure

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COLLIER SHANNON

InterCall, Inc.

**Review of USAC Administrator's
Decision**

February 28, 2008

About InterCall

- » Subsidiary of West Corporation, a leading provider of outsourced communications solutions including customer acquisition, customer care, emergency communications and conferencing services
- » Not a telecommunications carrier; does not own transmission facilities
- » Purchases toll-free services from IXC's as an end user of telecom
 - » Intercall paid over \$20 million in carrier USF surcharges from 2005-2007

InterCall's Appeal and Petition for Stay

- » In this Proceeding, InterCall Seeks:
 - » **Reversal** of USAC Conclusion that InterCall provides "Toll Teleconferencing"
 - » USAC's decision violates 54.702(c)
 - » The 499A Revision cannot add new filers
 - » Audio bridging is not a telecom service
 - » Stand alone audio bridging providers contribute indirectly as end users
 - » **Stay** of the USAC Instruction to File 499s
 - » Cannot single out InterCall in the industry
 - » Retroactive application would harm InterCall
 - » A Stay will Preserve the Status Quo

Comments Filed 2/25/08

- » Stand Alone Audio Bridging Providers
 - » Premiere, Genesys, Canopco, Telespan Publishing Corporation
- » Integrated Audio Bridging Providers (IXCs)
 - » AT&T, Qwest, Verizon

The Comments Validate InterCall's Factual Claims

» **All Commenters Agreed**

- » Stand Alone Providers Have Viewed Themselves as End Users for Decades
- » IXC's Treat Stand Alone Providers as End Users Today
- » An Industry-Wide Solution is Appropriate
- » All Commenters Except Verizon Agree that Retroactive Application is Inappropriate
 - » Verizon Takes No Explicit Position on Retroactivity

All but One Commenter Agree that Audio Bridging is Not a Telecom Service

- » Stand Alone Providers Agree with InterCall that Audio Bridging is not a Telecom Service
- » AT&T Distinguishes the Transmission from the “Audio Bridging Service” (though it pays on both)
- » Only Verizon Contends that Audio Bridging is Telecom
 - » *Qwest v. Farmers* contradicts Verizon’s position
 - » Bridging providers do not offer transmission
 - » The audio bridge does not route calls
 - » Verizon does not point to any case that holds that conferencing providers are carriers

USAC's Decision is Not the Correct Vehicle to Address the Policy and Legal Issues

- » The FCC, not USAC, Must Decide if Audio Bridging is a Telecom Service
 - » Classification as a telecom service imposes many regulatory burdens wholly unrelated to USF (entry/exit regulation, tariffing, CPNI, etc.)
- » The FCC, not USAC, Must Provide Guidance to Stand Alone and Integrated Providers
 - » Identification of the transmission and bridging components of the service for USF purposes
- » Only a Rulemaking can Properly Provide an Industry Solution

The Alleged Competitive Harms from the Status Quo are Illusory

- » All Providers Contribute to USF for Transmission
 - » For a stand alone provider, assessment on the transmission component occurs when the provider purchases 800 service
 - » For an integrated provider, assessment on the self-provisioned transmission component can only be accounted for on the 499
- » AT&T and Verizon Do Not have to Pay More than Stand Alone Providers
 - » In audits, USAC agrees that the bridging component should be reported as non-telecom revenues
 - » If AT&T and Verizon pay only on the self-provided 800 service, they do not pay more than InterCall does as an end user

A Stay is Appropriate While the Bureau Considers the Policy Issues

- » Until the FCC Provides Additional Guidance, USAC Should Not Upset Decades of Industry Practice
 - » The FCC, not USAC, must set the policy
- » Retroactive Application of the USAC Decision Would Cause Irreparable Harm
 - » All stand alone providers confirmed that retroactive liability would devastate their businesses
- » Protracted Litigation with IXCs Over Refunds is not in the Public Interest
- » Stand Alone and Integrated Providers Can Pay the Same Amount Under Current Rules, So the Balance of Harms Favors a Stay